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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 71

PRESBYTERIAN CHURCH IN THE UNITED STATES ET AL.,

Petitioners

v.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,

Respondent.

and

PRESBYTERIAN CHURCH IN THE UNITED STATES ET AL.,

Petitioners

v.

EASTERN HEIGHTS PRESBYTERIAN CHURCH ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

MOTION OF WILLIAM P. THOMPSON, STATED CLERK OF THE GENERAL ASSEMBLY OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, ET AL., FOR LEAVE TO FILE BRIEF *AMICI CURIAE*.

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INDEX

	PAGE
MOTION FOR LEAVE TO FILE BRIEF *amici curiae*	1
CERTIFICATE OF SERVICE	6
BRIEF OF *amici curiae*	7
THE STATUS OF *amici curiae*	8
THE OPINION BELOW, see Appendix A	8
ARGUMENT	9
I. The Georgia Supreme Court Reversed its prior Decision without Warning	9
II. The Supreme Court of Georgia by its Decision Sets up the Civil Court and Jury as All-Powerful Archbishop over Churches, a Role heretofore Forbidden	10
III. The Decision of the Georgia Supreme Court Offends the Constitution of the United States	12
IV. The Decision of the Georgia Supreme Court is contrary to other modern State Court Decisions affecting the Petitioners	15
CONCLUSION	16
APPENDIX A—Opinion of the Supreme Court of Georgia	A1

Table of Cases

Barkley *v.* Hayes, 208 Fed. 319 11
Bramlett *v.* Young, 229 S.C. 519 15
Kedroff *v.* St. Nicholas Cathedral, 344 U.S. 94 ..... 3, 12, 14
Kreshik *v.* St. Nicholas Cathedral, 363 U.S. 190 ..... 3, 14, 15
Mack *v.* Kime, 129 Ga. 1 ..... 3, 4, 9
St. Johns Presbytery *v.* Central Presbyterian Church, 102 S.2d 714 (Fla.) 15
Sapp *v.* Callaway, 208 Ga. 805 ..... 4, 10
Stewart *v.* Jarriel, 206 Ga. 855 ..... 4, 10
Watson *v.* Jones, 13 Wall. 679 ..... 3, 9, 12, 14, 15

Constitution Cited

U. S. Constitution, First and Fourteenth Amendment 3, 14

IN THE

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OCTOBER TERM, 1967

No. 1380

PRESBYTERIAN CHURCH IN THE UNITED STATES ET AL.,

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EASTERN HEIGHTS PRESBYTERIAN CHURCH, ET AL.,

Respondents

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

MOTION OF WILLIAM P. THOMPSON, STATED CLERK OF THE GENERAL ASSEMBLY OF THE

UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA; REV. H. SHAW SCATES, STATED CLERK OF THE GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH; AND REV. MARION DE VELDER, GENERAL SECRETARY OF THE GENERAL SYNOD OF THE REFORMED CHURCH IN AMERICA, FOR LEAVE TO FILE A BRIEF *AMICI CURIAE*.

William P. Thompson, a member of and the Stated Clerk of the General Assembly of The United Presbyterian Church in the United States of America, and the Rev. H. Shaw Scates, a member of and the Stated Clerk of the General Assembly of the Cumberland Presbyterian Church, and the Rev. Marion de Velder, a member of and the General Secretary of the General Synod of The Reformed Church in America, respectfully move for leave to file the attached brief *amici curiae* in support of the Petition for a Writ of Certiorari. Counsel for the Petitioners have consented to the filing of a brief, but counsel for the Respondents in both cases have refused such consent.

William P. Thompson is the Stated Clerk of the General Assembly of The United Presbyterian Church in the United States of America, and, by virtue of his office, is the continuing executive officer of the said General Assembly. He represents an ecclesiastical body of approximately 3,275,000 communicant members.

The Rev. H. Shaw Scates is the Stated Clerk of the General Assembly of The Cumberland Presbyterian Church, and, by virtue of his office, is the continuing executive officer of said General Assembly. He represents an ecclesiastical body of approximately 76,000 communicant members.

The Rev. Marion de Velder is the General Secretary of the General Synod of The Reformed Church in America,

and, by virtue of his office, is the continuing executive officer of said General Synod. He represents an ecclesiastical body of approximately 232,000 communicant members.

The cases before this Court are of great importance to The United Presbyterian Church in the United States of America, The Cumberland Presbyterian Church, and The Reformed Church in America, and of equal importance to any church adhering to an hierarchical form of representative government. The forms of government of the applicants' churches are similar to the form of hierarchical representative government of the Petitioners, The Presbyterian Church in the United States.

The decision of the Supreme Court of Georgia in the cases before this Court seriously offends the First Amendment as included in the Fourteenth Amendment of the United States Constitution, as explained in *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952), and *Kreshik* v. *St. Nicholas Cathedral,* 363 U.S. 190 (1960). *Kedroff* reaffirmed the older leading case of *Watson* v. *Jones,* 13 Wall. 679 (1871), and raised it to constitutional stature.

The great importance of the decision of the Supreme Court of Georgia is that it holds that a court sitting with a jury may decide ecclesiastical matters. Thus, anyone having a complaint on an ecclesiastical action may seek the judgment of a civil judge and jury, notwithstanding that the church concerned has a constitution establishing a form of government and tribunals requiring determination by it of ecclesiastical questions.

The importance of the decision of the Supreme Court of Georgia is further emphasized by the fact that the decision reversed the law of Georgia as it existed theretofore. The decision expressly overruled the leading and controlling Georgia Supreme Court case of *Mack* v. *Kime,* 129 Ga. 1 (1907). The *Mack* case held that if a matter relates to creed, doctrine or teaching, the judgment of the

church tribunal is absolutely conclusive on the civil courts, whether, in the opinion of the judge of such courts, the decision appears to be right or wrong. 129 Ga. at 18. The *Mack* case accepted the doctrines of *Watson* v. *Jones* and the law of Georgia as stated in the *Mack* case was reaffirmed in the later cases of *Stewart* v. *Jarriel*, 206 Ga. 855 (1950) and *Sapp* v. *Callaway*, 208 Ga. 805 (1952).

Thus, the Supreme Court of Georgia cavalierly, without warning, reversed the law of Georgia as it existed to the time of the decision in the cases before this Court, an event that could not and should not have been anticipated in this day and age when the principle involved was not only the law of Georgia but the law of the United States.

The importance of the decision of the Supreme Court of Georgia is practical and not academic. The decision has been and is being used as the support of some dissenting elements in The United Presbyterian Church in the United States of America to seek State determination of ecclesiastical questions affecting said Church. Pending cases are *Presbytery of Riverside* v. *Superior Court in and for the County of Riverside, and Blackstone et al. Real Parties in Interest*, in the Court of Appeals, Fourth Appellate District—Division Two, State of California, Docket No. 4 Civ. 9092; and *Presbytery of Seattle* v. *Rohrbaugh et al.*, in the Superior Court of the State of Washington for King County, Docket No. 691249.

Movants desire to file the attached brief in order to bring these matters to the attention of the Court, since Movants believe that their consideration is essential to a full presentation of the constitutional issues involved in these cases.

WHEREFORE, it is respectfully requested that this Motion for Leave to File a Brief *amici curiae* be granted and the views expressed in that brief be considered by

this Court in resolving the question presented by the Petitioners for the writ.

Respectfully submitted,

GEORGE WILSON MCKEAG,
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May 9, 1968.

CERTIFICATE OF SERVICE

I, George Wilson McKeag, counsel for movants, hereby certify that I have served a copy of the foregoing Motion and attached brief by depositing a copy of the same in the United States mail, properly stamped and addressed to each of the following:

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This 9th day of May, 1968.

GEORGE WILSON MCKEAG

IN THE

Supreme Court of the United States

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No. 1380

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BYTERIAN CHURCH IN THE UNITED STATES OF AMERICA; REV. H. SHAW SCATES, STATED CLERK OF THE GENERAL ASSEMBLY OF THE CUMBERLAND PRESBYTERIAN CHURCH; AND REV. MARION DE VELDER, GENERAL SECRETARY OF THE GENERAL SYNOD OF THE REFORMED CHURCH IN AMERICA, *AMICI CURIAE*, IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI.

THE STATUS OF AMICI CURIAE

William P. Thompson, a member of and the Stated Clerk of the General Assembly of The United Presbyterian Church in the United States of America (hereinafter referred to as The United Presbyterian Church); and the Rev. H. Shaw Scates, a member of and the Stated Clerk of the General Assembly of The Cumberland Presbyterian Church; and the Rev. Marion de Velder, a member of and the General Secretary of the General Synod of The Reformed Church in America represent a deep interest in the cases before this Court. They are in accord with the Petitioners in the cases before this Court and consider it important to their Churches and any church that this Court grant the Petition and on hearing reverse the decision of the Supreme Court of Georgia.

THE OPINION BELOW

The opinion of the Supreme Court of Georgia is printed in the Appendix to this Brief, *infra* pp. A1-A20. The opinion is reported in 224 Ga. 61, 159 S.E. 2d 690 (1968).

ARGUMENT

I. THE GEORGIA SUPREME COURT REVERSED ITS PRIOR DECISION IN MACK v. KIME WITHOUT WARNING.

Until the decision of the Georgia Supreme Court in the cases before this Court, the law of Georgia was as stated by this Court in *Watson* v. *Jones,* 13 Wall. 679 (1871). It was so said in *Mack* v. *Kime,* 129 Ga. 1 (1907).

The Supreme Court of Georgia said in *Mack* at page 18:

> "How far the civil courts will interfere in the affairs of a religious body, where property rights are involved, is a question which has been addressed to many courts of this country. Often the controversy as to the right of property grows out of a controversy as to creed, doctrine, or teaching. While all of the rulings of the American courts cannot be said to be entirely uniform, the great weight of authority is to the effect that if a religious organization has, under its form of government, a tribunal constituted with jurisdiction to decide differences between its members as to creed, teaching, or doctrine, the civil courts will not undertake to review or revise the judgment of the church tribunal in reference to such matters. The cases which support this ruling seem to be founded upon sound reasoning, when we take into consideration the constitutional provisions which deny to Congress and the law-making powers of the different states the right to interfere in matters purely ecclesiastical. In some cases it has been said that the decisions of the church tribunals are persuasive, and not to be departed from by the civil courts, except where the decisions are clearly wrong. But the sounder rule is that laid down in those cases in which it is held

> that, if the matter relates to creed, doctrine, or teaching, the judgment of the constituted church tribunal is absolutely conclusive upon the civil courts, whether, in the opinion of the judges of such courts, the decision appears to be right or wrong. Where a right of property turns upon such a decision the civil courts will allow the property to go in that direction in which the decision of the church tribunal carries it."

The law of Georgia, as expressed in *Mack* v. *Kime* was affirmed by the much later case of *Stewart* v. *Jarriel,* 206 Ga. 855 (1950), although the latter case involved a non-hierarchical church. In *Sapp* v. *Callaway,* 208 Ga. 805 (1952), the Supreme Court of Georgia reaffirmed the existing law of Georgia, saying at page 810:

> "The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted, or censored by civil courts. These rules and principles are stated in *Watson* v. *Jones,* 80 U.S. 679. . . ."

It is clear that until the moment of the decision of the Supreme Court of Georgia, when it reversed the law of that State, the law of Georgia was in accord with the law as announced by this Court. Hence, the Petition for writ of certiorari should be granted.

II. THE SUPREME COURT OF GEORGIA BY ITS DECISION SETS UP THE CIVIL COURT AND JURY AS ALL-POWERFUL ARCHBISHOP OVER CHURCHES, A ROLE HERETOFORE FORBIDDEN.

It is the thesis of the Georgia court that it has the right to determine whether or not the church has made a "substantial" deviation from its doctrines. (A10-A12). The Georgia court reasons that if it so finds a "substantial"

deviation, then it can find in favor of dissenters claiming property of the church.

The reasoning of the Georgia court is contrary to the law of this country as shown later. However, on this point it is well, first, to read the wise observations of District Judge Van Valkenburgh in his opinion in *Barkley* v *Hayes*, 208 Fed. 319 (W.D. Mo. 1913), *aff'd* sub nom. *Duvall* v. *Synod of Kansas*, 222 Fed. 669 (8th Cir. 1915), *aff'd* sub nom. *Shepard* v. *Barkley*, 247 U.S. 1 (1918). The judge said at page 323:

> "The Constitution of the United States and of the several states guarantees to the individual absolute independence of religious belief and worship. He need associate himself with no religious organization if he does not wish to do so, and he need remain identified with one no longer than he may desire; but when he does unite with a church, and becomes a member of that ecclesiastical body, he voluntarily surrenders his individual freedom to that extent. So long as he desires to avail himself of such a relationship, and to enjoy the privileges and benefits flowing from that association, he must conform to the laws by which it is governed. He cannot complain if its articles of faith be changed, nor if its property—in which he has no individual ownership—be transferred under constitutional forms; in such case, he has no personal or property rights which the civil courts can or should protect. Any other view would be entirely subversive of the very theory of organization. The church would be dissolved into a mere aggregation of individual views and theories. It is impossible that all men, or even many men, should exactly agree upon all the incidental details of standards or policies. It is the substance that is important; and it is essential that the power of decision in such matters should be lodged somewhere, and should be final."

It is clear that the power of decision referred to by the District Judge is the Church, not the civil court. The civil court is never the Archbishop of the Church. Hence, the civil court cannot say that the Church has deviated from its doctrines, whether substantially or otherwise. The civil court may not say what the doctrines of the Church are, or what they should be. Only the Church may say that.

The basic principle followed by this Court in *Watson* v. *Jones* and reaffirmed in *Kedroff* v. *St. Nicholas Cathedral* is summarized in one sentence, particularly appropriate to the instant case:

> *"The law knows no heresy,* and is committed to the support of no dogma, the establishment of no sect." 13 Wall. at 728, quoted, 344 U.S. at 114. (Emphasis added.)

III. THE DECISION OF THE GEORGIA SUPREME COURT OFFENDS THE CONSTITUTION OF THE UNITED STATES.

The Georgia court stated as the grounds of its decision that the Presbyterian Church in the United States "substantially" departed from its doctrines, and therefore lost jurisdiction over its constituent churches. The grounds of alleged departure are:

1. The declaration of the 1961 General Assembly of the Presbyterian Church in the United States that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to Reformed theology. (A12).

This alleged ground ought to be characterized and evaluated exactly as was stated in the Motion for Rehearing to the Georgia court:

> "It should be noted that the declaration of the General Assembly did not in any way attempt to amend the portion of the Confession of Faith with

which it was dealing but merely stated the opinion of a majority of those voting that in their opinion it was not necessary for a member to believe that certain persons were preordained to Hell when they are born, in order to be a good Presbyterian . . . , for the basis of belief in Jesus Christ is that all persons, no matter how evil they may be, can be saved if they follow Christ."

It may be blunt to say, but respectfully, that the Georgia court or any court and jury should not decide the basis of one's salvation. It seems that this illustrates the odd position of the Georgia court in the cases before this Court.

2. Refusal of the General Assembly of the Presbyterian Church in the United States to endorse a proposal of a presbytery to seek constitutional permission for voluntary Bible reading and prayer in the public schools. (A12).

3. The involvement of the Church, through the National Council of Churches for Christ, in the Mississippi Delta Project, a civil rights movement. (A12).

4. Approval by the Church of ordination of women as ministers and ruling elders. (A12).

5. Approval by the Church of pronouncements on the Vietnam conflict. (A13).

6. Endorsement by the Church of the civil rights movement. (A13).

7. Statements made in the literature of the Church on the subject of civil disobedience. (A13-A14).

Not a single ground can be said to be a change in the Constitution of the Presbyterian Church in the United States. The nearest any comes to such is the recognition of women as being eligible for ordination as ministers and elders. However, the Constitution of the Presbyterian

Church in the United States does not specify the sex of its ministers and elders, and never has.

It is noted that two of the grounds deal with the subject of civil rights, a subject a Church not only ought to discuss, but a subject that is so obvious it should not be mentioned by way of criticism of the Church. It is here noted that, in its primitive form, civil rights were the basis of the stand taken by The United Presbyterian Church in the Civil War Period which gave rise to the leading case of *Watson* v. *Jones,* 13 Wall. 679 (1871).

The matters here involved concern creed, doctrine and teaching, and raise issues of ecclesiastical authority of the governing body of a church. The right of civil courts to pass upon such matters is the same issue that has been settled by the decisions of this Court. The thesis of the Georgia Supreme Court that it may review the actions of The Presbyterian Church in the United States and decide whether they are right or wrong offends the First Amendment as included in the Fourteenth Amendment of the Constitution of the United States. This was decided by this Court in *Kedroff* v. *St. Nicholas Cathedral,* 344 U. S. 94 (1952), and *Kreshik* v. *St. Nicholas Cathedral,* 363 U. S. 190 (1960).

To review, *Kedroff* held a New York statute unconstitutional, in that it provided for a determination of the occupancy of the Cathedral in New York differently than by appointment of the ecclesiastical authority, namely the Patriarch in Moscow.

After *Kedroff,* it was thought that the decision of this Court could be circumvented. That is, it was thought that the case could be put on common law grounds by showing that the decision of the Patriarch in Moscow was not freely exercised. The case was thus pursued. See 306 N. Y. 38, and 7 N. Y. 2d 191. The New York Court of Appeals again found against the appointee of the Patriarch in Moscow, and found as a fact that the ecclesiastical authority of the Patriarch was not freely exercised.

This Court in *Kreshik* again reversed the New York Court of Appeals, saying at page 191:

> "it is not of moment that the State has here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power we are asked to scrutinize."

IV. THE DECISION OF THE GEORGIA SUPREME COURT IS CONTRARY TO OTHER MODERN STATE COURT DECISIONS AFFECTING THE PETITIONERS.

Similar issues were present in recent state court decisions affecting the Presbyterian Church in the United States and were resolved in favor of the Church. See *St. John's Presbytery* v. *Central Presbyterian Church of St. Petersburg*, 102 So. 2d 714 (Fla. 1958), and *Bramlett* v. *Young*, 229 S.C. 519 (1956). These cases followed the decision of this Court in *Watson* v. *Jones*, 13 Wall. 679 (1871).

CONCLUSION

It is therefore requested that this Court grant the Petition for writ of certiorari, and on consideration thereof reverse the decision of the Georgia Supreme Court.

Respectfully submitted,

GEORGE WILSON MCKEAG,
Attorney for William P. Thompson, Stated Clerk of the General Assembly of The United Presbyterian Church in the United States of America; the Rev. H. Shaw Scates, Stated Clerk of the General Assembly of The Cumberland Presbyterian Church; and the Rev. Marion de Velder, General Secretary of the General Synod of The Reformed Church in America.
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